PUBLIC PROSECUTOR

v.

YONG KONG HIN

HIGH COURT MALAYA, MALACCA
WAN YAHYA J
[CRIMINAL TRIAL NO. 2 OF 1981]
15 SEPTEMBER 1981

CRIMINAL PROCEDURE: *Trial within trial - Cautioned statement as evidence - Objections - Statements obtained by threats and inducements - Recorder active in investigation - Voluntariness before caution administered, whether admissible - Meaning of threats and inducements.*

The accused was charged for murder under s. 302 of the Penal Code. In the course of the trial, the prosecution sought to introduce a cautioned statement made by the accused while in custody, as evidence. The defence objected to the admission and hence this trial within a trial.

The objections were that:-

(a) The statement was not voluntary, because it was obtained by threats and inducements made shortly before recording.

(b) The recorder of the statement had taken an active part in the investigation.

(c) Voluntariness came before the cautioned statement was administered and therefore inadmissible.

The accused claimed that he had been severely beaten up for three to four hours continuously for three successive nights in the lock up.

Held:

[1] The accused had failed to satisfy the Court that the assault had taken place, nor was there any sign of inducement. Even if the inducement was made the accused does not appear to be a 'simple Simon' to be carried away.

[2] The recorder not only took an active part in the investigation and arrest of the accused but he was also monitoring the movement and activities of the accused even before his arrest.

[3] It is the rule of prudence and more so the rule of expedience that the investigating officer and those involved or having detailed knowledge of the case should abstain from recording it.

[4] Statements made by an arrested person are admissible only on proof of voluntariness and caution. The voluntariness of the accused came before administering the caution.

... Threats or inducements whether made shortly before recording the statement or sometime previously, will affect the voluntariness of such statement and may render it inadmissible. Threats must bear some proportionate semblance to the impending punishment. The inducement has to be of such a persuasive and convincing nature as capable of deceiving any ordinary man of similar walk of life as the accused into believing that the disclosure of his part of the offence will completely or partially relieve him or someone close to him from impending punishment ...

[Statement inadmissible.]

For the public prosecutor - C.W. Chan, DPP
For the accused - Karpal Singh

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Also found at [1981] CLJ 178